



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2003

Mr. Marc J. Schnall  
Soules & Wallace, P.C.  
Frost Bank Tower  
100 W. Houston Street, Suite 1500  
San Antonio, Texas 78205-1457

OR2003-6721

Dear Mr. Schnall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188254.

The City of Dilley (the "city"), which you represent, received a request for certain ethics commission reports and an "itemized statement of cell telephone issued out to Manuel Garcia, Mayor." You state that the requested ethics reports have been released. You assert that the itemized telephone bill may not constitute public information subject to disclosure under the Public Information Act (the "Act"). In the alternative, you claim that an account number on the bill is excepted from disclosure under section 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act applies to "public information," which is defined under section 552.002 as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002; *see also id.* § 552.021.

You state that "[t]he cell telephone in question was issued to Mayor Manuel Garcia by the City of Dilley. Although the City of Dilley received and paid the bill, Mayor Garcia has reimbursed the City for the full amount of the bill." You state that "if the telephone bill had been addressed to Mayor Garcia, sent to his home, and paid by him, then it would likely not be public information." You argue that the same result should occur here because "the

economic result to the City of Dilley in the present situation is essentially the same since Mayor Garcia has reimbursed the City in full for the charges shown on the wireless telephone bill.”

We disagree. In the situation in which a telephone bill is addressed to a public employee, sent to that employee at her home, and paid by the employee, the telephone bill is never “collected, assembled, or maintained [by the governmental body] in connection with the transaction of official business.” In this instance, the bill is addressed to the city, sent to the city, and paid by the city. The fact that the city was subsequently reimbursed for the bill does not change the fact that the city was responsible for the bill and expended public funds in paying it. Therefore, under these circumstances, we conclude that this bill was “collected, assembled, or maintained [by the city] in connection with the transaction of official business” and constitutes information subject to disclosure under the Act.

You assert that the account number contained in the bill must be withheld pursuant to section 552.136 of the Government Code. This section states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Thus, pursuant to this section the city must withhold the account number we have marked.

In summary, the city must withhold the marked account number in accordance with section 552.136. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

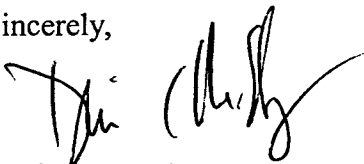
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 188254

Enc. Submitted documents

c: Ms. Mary Ann Obregon  
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(w/o enclosures)